

APPEAL NO. 010427

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 26, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not suffer disability as a result of a compensable injury. The claimant appeals the hearing officer's decision, claiming the hearing officer erred in requiring proof of injury by an electric shock that caused the claimant to fall; that the hearing officer erred in finding no disability; and that the respondent's (self-insured) defense is limited by the 60-day rule. The self-insured responds urging affirmance.

DECISION

Affirmed.

The claimant alleges a compensable injury while in the course and scope of his employment with the (employer) on _____. The claimant was attempting to repair a fan motor for his employer. He was on an eight-foot ladder when he alleges he was shocked by an electric current and fell to the ground. A statement from coworker Mr. D, dated April 4, 2000, states that as the claimant was cutting into ground wire he "started flopping around for about 4-6 seconds then made a controlled fall off of [sic] chiller." The hearing officer determined that the medical records from the hospital emergency room do not indicate that there were any injuries related to an electrical shock. The claimant concedes that he was not injured by electrical shock in his brief wherein he states "[claimant's] injuries were caused by his contact with the ground, not the electrocution." The hearing officer in his decision and order notes there was no damage to the structure of the body due to an electrical shock.

The hearing officer specifically addressed the claimant's argument that even if the electrical shock had not knocked him off the ladder, the claimant nonetheless fell from the ladder sustaining, as a minimum, bruises. The hearing officer, in his Statement of the Evidence, commented:

The Hearing Officer understands the Claimant's argument that he may have sustained injuries from a fall from the ladder even though the electrical shock caused him no injuries. Even given that unlikely scenario, the facts surrounding the alleged fall from the ladder are so contradictory that one can give little or no credence to them.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d

477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge